

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

Willie D. JOHNSON,

Petitioner,

V.

**Vincent CULLEN, Acting Warden of San
Quentin State Prison.**

Respondent.

Case No. 3-98-cv-4043-SI

DEATH-PENALTY CASE

**[PROPOSED] ORDER RE WAIVER OF
ATTORNEY-CLIENT PRIVILEGE**

Petitioner Willie Darnell Johnson has filed a petition for writ of habeas corpus in this Court challenging his 1987 conviction and death sentence in *People v. Johnson*, Contra Costa County Superior Court case no. 33309. Petitioner contends, *inter alia*, that he was deprived of effective assistance of trial counsel during the guilt and penalty phase trials in that case. This Court has ordered an evidentiary hearing on Petitioner's claim of ineffective assistance.

According to the parties, Petitioner was, at various times before trial and through sentencing, represented by Charles Hoehn III (Cal. St. Bar No. 42868), Thomas G. Shelby (Cal. St. Bar No. 40566), and Virginia V. Hart (Cal. St. Bar No. 88593). Mr. Shelby is deceased.

"It has long been the rule in the federal courts that, where a habeas petitioner raises a claim of ineffective assistance of counsel, he waives the attorney-client privilege as to all

1 communications with his allegedly ineffective lawyer.” *Bittaker v. Woodford*, 331 F.3d 715, 716
2 (9th Cir. 2003) (en banc); *see Osband v. Woodford*, 290 F.3d 1036, 1038 (9th Cir. 2002);
3 *Wharton v. Calderon*, 127 F.3d 1201, 1203 (9th Cir. 1997). As Petitioner contends he was
4 deprived of the effective assistance of trial counsel, he has waived, for the purpose of this federal
5 habeas corpus proceeding, his attorney-client privilege with Charles Hoehn III, Virginia V. Hart,
6 and Thomas G. Shelby.

7 Charles Hoehn III and Virginia V. Hart shall, upon the request of Respondent’s counsel,
8 submit to a deposition by Respondent’s counsel, at a date mutually agreeable to Petitioner’s and
9 Respondent’s counsel and satisfying any scheduling order this Court has entered. Charles Hoehn
10 III and Virginia V. Hart shall, at or before the time of their respective depositions, provide to
11 Respondent’s counsel any material(s) in their possession relating to their representation of
12 petitioner in Contra Costa County Superior Court case no. 33309.

13 The Protective Order, filed in this case on April 24, 2005, applies to all otherwise privileged
14 statements discovered by Respondent pursuant to this Order.

15 IT IS SO ORDERED.

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17 Dated: _____ 1/28/11
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SUSAN ILLSTON
United States District Judge

DECLARATION OF SERVICE BY U.S. MAIL

Case Name: **Johnson v. Cullen, Acting Warden of California State Prison at San Quentin**

No.: **C 98-4043 SI**

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter. I am familiar with the business practice at the Office of the Attorney General for collection and processing of correspondence for mailing with the United States Postal Service. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the United States Postal Service that same day in the ordinary course of business.

On January 28, 2011, I served the attached

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by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the internal mail collection system at the Office of the Attorney General at 455 Golden Gate Avenue, Suite 11000, San Francisco, CA 94102-7004, addressed as follows:

California Appellate Project
Federal Court Docketing
101 Second Street, Suite 600
San Francisco, CA 94105

Michael G. Millman
Executive Director
California Appellate Project (SF)
101 Second Street, Suite 600
San Francisco, CA 94105

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on January 28, 2011, at San Francisco, California.

A. Murillo
Declarant

/s/ A. Murillo
Signature